

### **REMARKS**

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

#### **I. Status of the Claims**

Claims 1-18 are pending.

Claims 1-7, 9-11, 13-18 are amended without the introduction of new matter.

#### **II. Request for Priority under 35 U.S.C. §119**

Applicants respectfully request that the Examiner acknowledge the claim for foreign priority under 35 U.S.C. §119 for Japanese Patent Application Nos. 2002-209330 and 2003-134906, filed on July 18, 2002 and May 13, 2003, respectively. Note that a Request for Priority under 35 U.S.C. §119 was filed on May 28, 2002, and the Application Data Sheet lists the foreign priority information.

#### **III. Rejections Under 35 U.S.C. § 112**

Claims 9, 15 and 16 were rejected under 35 U.S.C. §112, second paragraph, as indefinite. Accordingly, the claims are amended to overcome those rejections. However, if the Examiner disagrees, the Examiner is invited to telephone the undersigned so that mutually agreeable claim language may be identified.

Claims 1-6 and 14-18 were rejected under 35 U.S.C. §102(b) as anticipated by Maynard (U.S. Patent No. 5,385,539). Applicants respectfully traverse that rejection.

The outstanding Office Action asserts that Maynard discloses all of the limitations recited in claim 1 of the present application. However, what Maynard describes is a hematocrit measurement sensor that requires two light detecting devices.

The presently preferred embodiment is a hematocrit measurement sensor comprising a light emitting device for emitting light into a blood sample and *two light detecting devices* for detecting the light emitted into the blood sample. The light emitting and light detecting devices are arranged in a predetermined geometric pattern such that *light traveling from the light emitting device must travel further to reach one light detecting device than to reach the other light detecting device*, thereby forming a light path from the light emitting device to one light detecting device which is longer than the light path from the light emitting device to the other light detecting device. (emphases added)

Maynard further describes at column 7, lines 49-52, referring to Fig. 5, that “[t]he light detecting means are illustrated in FIG. 4 [sic] as a short path diode 32 and a long path diode 34. Again, the path to diode 34 is longer than the path to diode 32.”

Maynard does not disclose or suggest a hematocrit sensor with a sensor including a light emission device and *a single light reception device* provided with the housing, as recited in claim 1.

Accordingly, amended independent claim 1 and claims 2-6 dependent therefrom are patentably distinguishable over Maynard. Amended claim 14 and claims 15-18 dependent therefrom are also patentably distinguishable at least for the above reasons advanced for amended claim 1 to the extent that amended claim 14 includes features substantially similar to amended claim 1.

Therefore, Applicants respectfully request the withdrawal of the rejection of claims 1-6 and 14-18 based on Maynard.

**V. Rejections Under 35 U.S.C. § 103**

Claims 12 and 13 were rejected under 35 U.S.C. §103(a) as unpatentable over Maynard in view of the Examiner's statement of ordinary skill. Further, claims 7-11 were rejected under 35 U.S.C. §103(a) as unpatentable over Maynard in view of Burbank et al. (U.S. Patent No. 6,582,385, herein "Burbank").

Applicants respectfully submit that claims 7-13 are allowable at least for the above reasons advanced for independent claim 1 from which they depend. In addition, claims 7-13 are allowable because Maynard teaches away from using a single light reception device. See Maynard, column 3, lines 39-51. Further, claims 7-11 are allowable because Burbank does not supplement the deficiency in Maynard. Therefore, Applicants respectfully request the

## CONCLUSION

The Examiner is respectfully requested to contact the undersigned at the telephone number indicated below once he has reviewed the proposed amendment if the Examiner believes any issue can be resolved through either a Supplemental Response or an Examiner's Amendment.

Respectfully submitted,

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